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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

No.....

ESTHER CRYSTAL PICKETT, otherwise known as E. C. Pickett, PETITIONER,

vs.

CHESTER BOWLES, Administrator, Office of Price Administration, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Tenth Circuit entered on the 23rd day of February, 1946 (R. Page 59-60).

OPINION BELOW.

The Circuit Court of Appeals for the Tenth Circuit filed no written opinion in support of the judgment affirming, as modified, the judgment of the United States District Court for the District of Colorado. The affirmance was on authority of R. E. Schreffler doing business as Schreffler Steel and Supply Company and Byron G. Rogers, guardian ad

litem, against Chester Bowles, Administrator of the Office of Price Administration now reported at 153 Fed. Rep. 2d Series, Page 1 (R. Page 59-60).

JURISDICTION.

The judgment of the Circuit Court of Appeals for the Tenth Circuit, which is the subject of this review, was entered on the 23rd day of February, A. D., 1946 (R. Page 59-60). The jurisdiction of this Honorable Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U.S.C.A. par. 347(a)).

QUESTIONS PRESENTED.

The questions presented for determination are:

(1) Whether the bar of the Statute of Limitations provided for by Section 205(e) of the Emergency Price Control Act of 1942 as amended and extended June 30, 1944, precluded recovery.

(2) Whether the Equitable Doctrine of Estoppel invoked and asserted by the petitioner afforded a defense to the claim of the respondent.

THE STATUTES AND REGULATIONS INVOLVED.

The pertinent sections of the Emergency Price Control Act of 1942 as amended and extended[1] Revised Maximum Price Regulation No. 341 and Procedural Regulation No. 1 are set out at Pages i to iv of the Appendix.

THE STATEMENT.

The respondent, pursuant to the authority vested in him by Section 205(e) of the Emergency Price Control Act of 1942 as amended and extended, filed his complaint against the petitioner alleging a violation of Revised Maximum Price Regulation No. 341 in the sale of a 1942 Chevrolet truck, and prayed judgment in the sum of Thirteen Hundred Fifteen Dollars and Seventy-Seven Cents ($1315.77) (R. 1-2).

The answer, interalia, admitted the sale at the price alleged, but specifically raised the affirmative defenses of the Statute of Limitations provided for by Section 205(e) of the Emergency Price Control Act of 1942 as amended

[1] 50 U.S.C.A. App 313.

and extended and the Equitable Doctrine of Estoppel (R. 3-7 and R. 12-13).

The factual situation presented by the record may be summarized as follows:

The petitioner has for some years past been engaged in the small loans business at Boulder, Colorado (R. 31). In the course of that business she made a loan to one Dudley Apple and received as security therefor a mortgage on the 1942 Chevrolet truck which is the subject of this litigation, and divers other articles of personal property belonging to Apple and one Ellery Carruthers (R. 31). Apple, having defaulted on his contract, the petitioner in December, 1943, acquired title to the vehicle by foreclosure (R. 32). On January 14, 1944, the petitioner advertised this motor vehicle for sale in the *Boulder Camera* (R. 34), and shortly thereafter Harry Galbasini, a trucker, made inquiry concerning its purchase. The petitioner, not being acquainted with the maximum ceiling price at which the vehicle could lawfully be sold, made inquiry of David D. Hutchinson, the Price Clerk at the Local War Price and Rationing Board of the Office of Price Administration for Boulder County, Colorado, and was advised by this official that the price at which it could lawfully be sold was in the neighborhood of Fifteen Hundred Dollars ($1500.00) (R. 33-35), but that the actual price could be determined only after the petitioner had supplied certain written data which she was to obtain from the dealer who first sold it to Apple. Thereupon, and on the 17th day of January, 1944, it was agreed by and between the petitioner and Harry Galbasini that he pay to her the sum of One Hundred Dollars ($100.00) as a deposit on the purchase price of the vehicle, and received from the petitioner the following written memorandum of the transaction (Pre-Trial Conference Identification No. 1 (R. 61)):

> "Received of Harry Galbasini $100 deposit on 1942 Chev. truck. Price of fifteen hundred and a few extra dollars will be paid by Jan. 20th, 1944, if OPA price is arrived at by then."

On January 20, 1944, the petitioner, having supplied the data requested by the Price Clerk, and this official, having

determined that the lawful ceiling price was Fifteen Hundred and Eight Dollars and Ninety-Five Cents ($1508.95), transferred the title to Galbasini for the balance due, and forthwith released her mortgage on the divers other items of personal property that it covered. Six weeks later the Office of Price Administration advised the petitioner that the sale at the figure determined by the Price Clerk had been for a sum greater than the lawful maximum (R. 40). On January 18, 1945, the Respondent instituted this action (R. 2).

At the trial of this cause the respondent abandoned his claim for treble damages under the Act and advised the Trial Judge that he would limit his claim to what was then alleged to have been the actual over-charge. The Trial Court after full hearing entered judgment against the petitioner in the sum of Four Hundred Thirty-Eight Dollars and Fifty-Nine Cents ($438.59) (R. 72). The parties, before oral argument in the Circuit Court of Appeals, stipulated and agreed that the actual overcharges, if any, under the regulations, were Two Hundred Forty-Seven Dollars and Ninety-Eight Cents ($247.98) (R. 59-60) and requested that court to modify the judgment accordingly in the event of affirmance.

A. THE BAR OF THE STATUTE OF LIMITATIONS PROVIDED FOR BY SECTION 205(e) OF THE EMERGENCY PRICE CONTROL ACT OF 1942 AS AMENDED AND EXTENDED PRECLUDED RECOVERY.

Under the facts outlined hereinabove, the learned Trial Court found, as a matter of fact, that the sale was consummated on January 20, 1944, and for a price in excess of the lawful maximum. This led to the legal conclusion that "this action was instituted one year from the date of the occurrence of said violation of charging and collecting for said truck * * *" (R. 70). Thus, it is apparent that the Trial Court fixed the day of cleavage as the date upon which the petitioner made delivery of the vehicle and received the balance of the purchase price.

The learned Court below, in affirming this legal conclusion on the authority of R. E. Schreffler doing business

as Schreffler Steel and Supply Company vs. Chester Bowles,[2] put the proposition in the following language:

> "The words 'sale and delivery' are not synonymous terms. They have separate and distinct meanings. It must be presumed that Congress used them according to their ordinary and usual accepted meaning and understanding. Otherwise there would have been no need to include them both in the Act. Revised Price Schedule No. 49 forbids, among others, the sale, delivery or transfer of iron or steel in excess of the maximum prices. Under both the provisions of the Act and Regulation No. 49 the sale or delivery of iron or steel products in excess of the maximum prices constitutes separate and distinct violations. The articles having been shipped and delivered within the one-year period, the action was timely and the statute of limitations was no defense."

This theory, we respectfully submit, is not tenable under the present legislation. As originally written, Section 205(e) of the Emergency Price Control Act of 1942[3] provided, with respect to the Statute of Limitations, as follows:

> "* * * Any suit or action under this subsection may be brought in any Court of competent jurisdiction and shall be instituted *within one year after delivery is completed* * * * ."

Prior to the time in which the respondent filed his complaint, the Congress amended Section 205(e) in the following language:

> "If any person *selling* a commodity violates a regulation, order or price schedule prescribing a maximum price or maximum prices, the person who *buys* such commodity for use and consumption other than in the course of trade or business, may *within one year from the date of the occurrence of the violation* * * * bring an action against the seller on account of the overcharge * * *."

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[2] 153 Fed. 2d 1.

[3] 50 U.S.C.A. App. 313.

In the event that the buyer does not bring his action, then:

> "The administrator may institute such action on behalf of the United States within such one year period."

Thus, it is apparent that by reason of the legislative change the date when delivery is completed is no longer controlling. Some legal efficacy must be ascribed to the legislative change, otherwise the action of the Congress would be of no moment. The only other date which could possibly lend itself to the situation is the date upon which the sale, or the contract to sell, was consummated. This position is strengthened when the proper consideration is given to the term "sale" as it is defined in the Act.

Section 302(a) therefore defines the term in the following language:

> "The term 'sale' includes sales, dispositions, exchanges, leases, and other transfers, *and contracts and offers to do the foregoing* * * *."

The facts remain undisputed that on the 17th day of January, 1944 the parties entered into a contract of sale for this motor vehicle at a price above the maximum ceiling permitted, and that the purchaser had paid to the petitioner a part of the consideration demanded. All that remained was for the Price Clerk to determine, on or before January 20, 1944, how much more than the Fifteen Hundred Dollars ($1500.00) the purchaser was to pay. If any violation occurred under these undisputed facts, it occurred on the date in which the parties entered into this admitted contract. Since the date of delivery under the amended legislation has no further legal effectiveness, the Trial Court's theory that the violation occurred on January 20, 1944, the date upon which the petitioner delivered the vehicle and collected the balance of the agreed over-the-ceiling selling price, has no statutory basis. Further, the view of the Trial Court over-looks the definition of the term "sale" as well as the fact that the petitioner actually received the sum of One Hundred Dollars ($100.00) on January 17, 1944, which bound the parties under the contract to the purchase and sale of

this motor vehicle. It was on January 17, 1944 that a sale, as that term is defined by the Act, was actually consummated, and it was on that day that the petitioner demanded an over-the-ceiling purchase price and actually received part thereof. This suit was instituted on January 18, 1945, a year and a day following the occurrence of that alleged unlawful transaction.

With respect to the presumptions which the learned Court below saw fit to indulge in, in order to find a legal basis for its legal conclusion that the action was timely begun, it is respectfully submitted, are wholly unwarranted and unnecessary since the Congress gave to the term "sale" definite and conclusive meaning. The term is so broadly defined by Section 302(a) of the Act that it is readily apparent that the Congress intended, and did include within its sphere, every conceivable physical transfer of personal property, as well as contracts or offers to do so. A search of the Act will disclose that the Congress did not attach specific meaning and definition to the term "deliver". But even if, for the sake of this argument, it was admitted that the terms are not synonymous, there can be no doubt that in an action for damages, pursuant to the provisions of Section 205(e) of the Act, the term "sale" includes the term "deliver". The Congress never did intend to give to these phrases *"the ordinary and usual accepted meaning and understanding"* which the learned Court below, in its opinion, presumes. But, on the contrary, it was never the intentment of the Emergency Price Control Act or the regulations promulgated thereunder to have the enforcement of the Act turn upon the technical concepts of the law of sales.[4]

The prohibition of the statute, when a claim for damages is prosecuted by the Administrator pursuant to the right of action afforded him by Section 205(e) of the Act, as distinguished from an action wherein equitable relief is sought under the provision of Section 205(a) or a criminal prosecution pursuant to Section 205(c), is against an unlawful sale, as that term is defined by the Act, and not an unlawful delivery. This must, of necessity, be the fact. Otherwise, what damages in the nature of over-charges and penalties

[4]United States vs. Lutz, 3rd Circuit, 142 Fed. 2d 985.

could the Administrator recover or the Court award where there has been an unlawful delivery without an unlawful sale? The over-charges and the penalties attached thereto are measured only by the amount the seller is unjustly enriched. It, therefore, follows that the *"date of the occurrence of the violation"* is not the date when delivery is completed, but, on the contrary, when the seller actually contracts an unlawful sale. The day of cleavage, for the purposes of the limitation provisions made and contained in Section 205(e) of the Act, is the day when the unlawful sale was consummated. At that moment "the person who buys such commodity for use and consumption other than in the course of trade or business may * * * bring an action against the seller on account of the over-charge." In the event that "the buyer either fails to institute an action * * * or is not entitled, for any reason, to bring the action, the Administrator may institute such action on behalf of the United States *within such one year period.*" (App. Pages i-ii.)

The pertinent and controlling words in the language of Section 205(e) are "selling", "buyer", "seller" and "overcharge". That is to say, that the right of action accrues either to the buyer or the Administrator only if a person sells a commodity above the ceiling price. The buyer, or the Administrator, as the case may be, then, and only then, *"within one year from the occurrence of the violation"* may bring his action against the seller "on account of the overcharge."

The delivery date, for the purposes of this section, is entirely foreign to the cause which gives rise to the action. The gravaman of the offense is not the unlawful delivery, but the unlawful sale as that term is defined by Section 302(a) of the Act. The date of the sale in the case at bar is undisputedly January 17, 1944.

B. THE EQUITABLE DOCTRINE OF ESTOPPEL AFFORDED TO THE PETITIONER A COMPLETE DEFENSE TO THE CLAIM OF THE RESPONDENT.

The great weight of authority, the stronger reasons and the settled rule support the proposition that the equitable doctrine of estoppel may be invoked against the sovereign in a proper case with the same force and effect as the

chancellor would apply it to the claims and rights of private parties under similar circumstances.

In support of this proposition, we respectfully call attention to Walker v. The United States[5], wherein the Court unequivocally puts the doctrine in the following language:

> "The underlying principle of all the decisions is that when the sovereign comes into a court to assert a pecuniary demand against the citizen, the court has authority, and is under a duty, to withhold relief to the sovereign, except upon terms which do justice to the citizen or subject, as determined by the jurisprudence of the forum in like subject matter between man and man. The acts or the omissions of its officers, if they be authorized to bind the United States or shape its course of conduct as to a particular transaction, and they have acted within the purview of their authority, may in a proper case work an estoppel against the government (citing cases).
>
> "The principle that the sovereign is bound by his own acts and those of his lawfully authorized agents within the purview of their authority is a wholesome one and requires the courts to visit an estoppel upon the sovereign in a proper case where he invokes judicial action. While the application of the doctrine is attended with difficulty under our institutions, where the sovereign of the United States does not reside in any one person or collection of persons, that difficulty is no reason for rejecting the operation of the principle if the facts of the particular case will admit of its application."

The precise principle enunciated in this case finds support in many others[6]. In the light of these decisions and pronouncements, there can remain no doubt that the Government, in a proper case, may be estopped from asserting a claim against one of its citizens. The only problem left for

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[5]139 Fed. 409.

[6]United States vs. Denver & Rio Grande West. R.R. Co. 16 Fed. 2d 374.
Ritter vs. United States, 28 Fed. 2d 265.
State of Iowa vs. Carr, 191 Fed. 259.

determination, therefore, is whether or not the evidence presents a factual situation to which the doctrine can be fairly applied.

It is undisputed that prior to the consummation of the sale of this motor vehicle, the petitioner, for the purpose of complying in every respect with the regulations promulgated by the respondent, went to the local War Price and Rationing Board established in her County and inquired of the respondent's Chief Price Clerk the lawful maximum price which she could demand and receive in its transfer, and that this Price Clerk, in the discharge of his official duties, and with the intention and for the express purpose of having the petitioner rely thereon, determined that it could lawfully be sold for Fifteen Hundred Eight Dollars and Ninety-Five Cents ($1508.95). The petitioner, in complete reliance upon this figure, entered into the contract, which is now the subject of attack, and did sell it at precisely the figure so determined by the Clerk, and forthwith released liens on divers other articles of personal property which she held as security for a loan which had been made prior thereto.

It is apparent, therefore, that all the necessary elements of estoppel are present, and in a normal situation would require the conscience of the chancellor to apply the doctrine. Notwithstanding, the respondent, at the trial, urged that the Court give careful consideration to his Procedural Regulation No. 1 which outlines the procedure to be followed by persons requiring interpretations of regulations. Section 55(b) thereof requires that they be written and rendered by certain designated employees. The respondent's position with respect to the case at bar being that the Chief Price Clerk of a local War Price Rationing Board is not among the designated personnel eligible to render a binding interpretation. In support of that theory, he called attention to Wells-Lamont Corporation v. Chester Bowles[7], wherein the Emergency Court of Appeals, speaking through Judge Lindley, said:

> "It must be presumed that the complainant was advised of the procedure which was required to fol-

[7] 149 Fed. 2d 364.

low in order to obtain an official interpretation upon which it could properly rely. And since it failed to comply with the prescribed method, it is not entitled to rely upon unofficial oral advice given by subordinate officials in the Office of Price Administration."

At first blush, this authority appears determinative of the problem presented in this phase of our argument, but careful scrutiny will show that the decision is based entirely upon the proposition that a principal is bound only by the acts of an agent to whom he has given express authority to act for him. It over-looks or misapprehends the equally well established doctrine that a principal is likewise bound by the acts of an agent to whom he has given implied or clothed with apparent authority. In the instant case, Hutchinson, the respondent's Chief Price Clerk for Boulder County, Colorado, was held out to the general public as the person authorized to give price information. With respect to the citizens of Boulder County, the respondent clothed his employee with implied or apparent authority that they could, and should, rely upon the counsel, advice, information and instruction which he gave them. It was to this agent, so clothed with authority, that the petitioner turned for such advice, counsel and information. It was in reliance upon the price at which he determined, under the regulations, to be the true ceiling price that she entered into the contract with Galbasini. It was in the utmost good faith that she released liens on divers other articles of personal property which she held as security and thus changed her position, to her detriment. It is respectfully submitted, that under the circumstances, she should not now be called upon to make good for the actions of the respondent's agent over whom she had no control. If, under the circumstances, the purpose and the spirit of the Emergency Price Control Act and the regulation which forms the basis of this litigation have been violated, good conscience would require that the respondent and his agent bear the consequences. To do otherwise would violate every principle of common decency and stretch to the breaking point the purposes for which this necessary war time legislation was enacted. It would, in effect, be permitting a wrong-doer to benefit by his own wrong.

In denying to the petitioner the protection of the equitable doctrine of estoppel for the reasons asserted in R. E. Schreffler doing business as Schreffler Steel and Supply Company vs. Chester Bowles[8], the Circuit Court of Appeals said:

> "If the Administrator could be bound or estopped by oral interpretation by one of a large number of his subordinates throughout the United States, the effective enforcement of the Act would be seriously hampered, if not entirely destroyed."

In the instant case Section 205(e) of the Emergency Price Control Act having created and vested in the Administrator of the Office of Price Administration a cause of action, it thereby granted to the citizen the correlary right to defend and to assert every defense in law and in equity which she could assert against another citizen. The Administrator, by reason of his official capacity, stands in no better position than a private litigant. Accordingly, the petitioner, unless prohibited by statute, could assert every defense available to her, including that which she has attempted in the case at bar. The Administrator, by the promulgation of Procedural Regulation No. 1, has, in effect, attempted, by his own act, to limit the defenses which could be interposed against him. Justice demands that this Honorable Court afford to this attempt the same consideration it would give to the defense of a wanton and reckless driver who announces, before the death of his victim, that he would be responsible only if death resulted in a particular manner. The remedy to the fears of the learned Court below, that the effective enforcement of the Act will be seriously handicapped if the Administrator can be bound or estopped by oral interpretations rendered by subordinates lies, not in its reluctance to invoke the doctrine, but rather in the appointment by the Administrator of good, conscientious and learned subordinate.

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[8]153 Fed. 2d 1.

CONCLUSION.

It is respectfully submitted that for the reasons hereinabove argued the Petition for Writ of Certiorari should be granted.

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APPENDIX.

Sec. 205(e) of the Emergency Price Control Act of 1942 as Amended and Extended June 30, 1944, 50 U.S.C.A. App. 313.

"(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade of business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity as the case may be; and the word 'overcharge' shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such

action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A Judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered. The amendment made by subsection (b), insofar as it relates to actions by buyers or actions which may be brought by the Administrator only after the buyer has failed to institute an action within thirty days from the occurrence of the violation, shall be applicable only with respect to violations occurring after the day of enactment of this Act. In other cases, such amendment shall be applicable with respect to proceedings pending on the date of enactment of this Act and with respect to proceedings instituted thereafter."

Sec. 302(a).

"The term 'sale' includes sales, dispositions, exchanges, leases and other transfers, and contracts and offers to do any of the foregoing. The terms 'sell', 'selling', 'seller', 'buy' and 'buyer' shall be construed accordingly."

Sec. 54. *Interpretations.*

"An interpretation rendered by an officer or employee of the Office of Price Administration with respect to any provision of the Act or of any regulation, price schedule, order, requirement, or agreement thereunder, will be regarded by the Office of Price Administration as official only if such interpretation was requested and issued in accordance with section 55 of this regulation. Action taken in reliance upon and in conformity with an official interpretation and prior to any revocation or modification thereof or to any superseding thereof by regulation, order or

amendment, shall constitute action in good faith pursuant to the provision of the Act, or of the regulation, price schedule, order, requirement or agreement to which such official interpretation relates. An official interpretation shall be applicable only with respect to the particular person to whom, and to the particular factual situation with respect to which, it is rendered, unless publicly announced as an interpretation of general application.

Sec. 55. *Requirements governing interpretations.*

"(a) *Requests for interpretations; form and contents.* Any person desiring an official interpretation of the Emergency Price Control Act of 1942 or any regulation, price schedule, order, requirement or agreement thereunder shall request it in writing from the nearest district office of the Office of Price Administration. Such request shall set forth in full the factual situation out of which the interpretative question arises and shall, so far as is practicable, state the names and post office addresses of the persons involved. If the inquirer has previously requested an interpretation on the same or substantially the same facts, his request shall so indicate and shall name the official or office to whom his previous request was addressed. If the interpretation will affect operations of establishments located in more than one state, the request shall name the states in which the establishments are located. No interpretation shall be requested or given with respect to any hypothetical situation or in response to any hypothetical question.

(b) *Interpretation to be written; authorized officials.* Official interpretations shall be given only in writing, signed by one of the following officers of the Office of Price Administration: The Price Administrator, the General Counsel, any Associate or Assistant General Counsel, any Regional Attorney, any Regional Price Attorney, any District Price Attorney, and any Division Counsel to a Price Division or Chief Counsel to a Price Branch in the Office of Price Administration, Washington, D. C., *Provided,* That in-

terpretations of general application shall be announced only by the Price Administrator, the General Counsel, any Associate or Assistant General Counsel, or any Regional Attorney or any Regional Price Attorney."